

MOCK TRIAL: Thomas v. Nomad

(Small Claims Court: Auto Accident Case)

In most places, there is a civil court frequently called the "Small Claims Court," to which plaintiffs can bring their complaints which can be settled for less than a certain sum of money. (The dollar limit in Small Claims Courts will usually be somewhere between \$500.00 and \$1,500.00.)

In most Small Claims Courts, the parties may appear without attorneys; in fact, in some states, the parties *must* appear without attorneys. The whole purpose of Small Claims Court is to provide a forum in which to resolve relatively minor legal problems quickly, yet with the full force of a trial-level ruling.

Cases arising out of minor auto accidents frequently appear in Small Claims Court. In such cases, where the damage involves a small sum of money, for a variety of reasons the parties may not want to file claims for the damage with their insurance companies; in some cases, one or both of the parties might be uninsured. For whatever reasons, one of the parties to an auto accident might sue the other in Small Claims Court if the damage is slight enough.

Most automobile accident cases revolve around one important question: which driver was at fault in the accident? To prove that the defendant is at fault, the plaintiff must show, by a preponderance of the evidence, that the defendant was somehow negligent, and that this negligence caused the accident. Negligence means that a person failed to behave with a reasonable amount of care. In a case in which an automobile driver is accused of being negligent, that driver's failure to behave with reasonable care could be demonstrated by evidence that the driver was speeding, driving without headlights, failing to obey traffic signs, or otherwise ignoring the rules of the road and that the defendant's failure to be careful was the cause of harm to the plaintiff.

Sometimes, particularly in cases involving auto accidents, both parties might be at fault. In such a case, while the plaintiff might be able to show that the defendant was negligent, the defendant might similarly be able to prove that the plaintiff was also negligent. In cases in which the plaintiff's negligence might also have helped to cause the accident, the court might find what is called *contributory negligence* on the part of the plaintiff. Depending on the law in the state where the accident occurred, contributory negligence can cause a reduction in the amount of money awarded to the plaintiff, or may result in a decision for the defendant.

Also, in some cases, while one party or both might be proven negligent, it still could be proven that one party could have avoided the accident, on the basis that there was a *last clear chance* to get out of the way which the one party failed to take. In such cases, whatever party is shown to have had the last clear chance to avoid the accident and to have failed to take it will probably lose the case.

Superior Court of Anytown Small Claims Court

Walker THOMAS, plaintiff)	
)	
v.)	No. MT. 1003
)	
Sam NOMAD, defendant)	

Statement of Facts

All of the parties agree to the following facts:

On Saturday, November 13, at approximately 11:45 p.m., a collision occurred between a Dodge Omni and a Ford Escort. The Escort was driven by Walker Thomas. The Omni was driven by Sam Nomad. The accident occurred at the intersection of Independence Avenue and Sixth Street in Anytown, U.S.A.

Walker Thomas was driving northbound on Sixth Street, a one-way street. He had stopped at a red light at the corner of Sixth and Independence. Sam Nomad was approaching the intersection heading east on Independence, also a one-way street. The light as he approached the intersection was yellow. As he approached the intersection, he saw flashing red lights, an ambulance, in his rearview mirror. He pulled to the right toward the southwest corner, and into the intersection. At this same moment, the light for Thomas turned green and he proceeded into the intersection. The two cars collided, and the ambulance sped past.

Mr. Thomas has filed suit against Mr. Nomad in the Small Claims Court of Anytown, which handles claims of \$1,000.00 or less.

Statement of the Law

The State of Anytown follows this statement of the doctrine of last clear chance which was made in its Court of Appeals in a prior case:

"... even if the plaintiff is found to be contributorily negligent, the defendant may be found liable if it is clear from the facts that the plaintiff was unaware of this position, that the defendant was aware of the dangerous situation and could have avoided the accident if he had exercised reasonable care. This doctrine only applies when the defendant has a last clear chance to avoid the accident..." *Hadley v. Peerless*, 22 Anywhere 2d 1 (1920).

Parties and Witnesses

WALKER THOMAS, plaintiff Age: 37 Occupation: Plumber
332 Chestnut Street

SYLVIA DRIVER, witness for the plaintiff Age: 32
Occupation: Police Officer
Rm. 301, Municipal Headquarters

SAM NOMAD, defendant Age: 21 Occupation: Student
318 Baxendale Hall
Anyday College

MIKE ROPER, witness for the defendant Age: 27
Occupation: Ambulance Driver
1734 Dominion Street

Documentary Evidence

1. Affidavit of Walker Thomas
2. Affidavit of Sylvia Driver
3. Affidavit of Sam Nomad
4. Affidavit of Mike Roper
5. Police Diagram of Accident

DOCUMENT NO. 1 Affidavit of Walker Thomas

My name is Walker Thomas. I am the plaintiff in this case.

On Saturday, November 13, I took my wife Diana out to dinner. At the time, she was eight months pregnant. I had two or three drinks, and then, because she wasn't feeling too well, we went home and Diana went to bed. About 11:25, Diana said she thought she was in labor, and that we'd better go to the hospital.

I sure was nervous for Diana. We had already lost one baby born prematurely, and we both were desperate to have a healthy baby this time. We rushed into the car and set off for the Anytown hospital, about a ten-minute drive under normal conditions. We left the house about 11:35.

About two minutes away from the hospital, I stopped at the light at the intersection of Independence Avenue and Sixth Street. I was going north on Sixth, a one-way street. When the light on Independence turned yellow, I got ready to go as soon as my light turned green. To my left I could see a small blue car on Independence, but I didn't notice anything unusual.


As soon as the light turned green, I entered the intersection. To my shock, I saw the small blue car start up at the same time and speed right in front of me. I slammed into his right fender. I didn't even notice the ambulance that sped past us.

Fortunately, my wife wasn't hurt. The police came right away, and one of the officers took her to the hospital.

The damage to my car was bad. The whole left side and hood had to be replaced, and I had to get new bushings and a wheel alignment, as well as some other work. The whole bill came to \$850.00.

I had never been in an accident before; I never even received a ticket for a moving violation.

Fortunately, our baby was fine.


/s/Walker Thomas

DOCUMENT NO. 2 Affidavit of Sylvia Driver

My name is Sylvia Driver. I have been a police officer in Anytown for five years. I was on duty Saturday night, November 13, when a call came through the dispatcher that an ambulance driver witnessed an accident at the corner of Sixth and Independence.

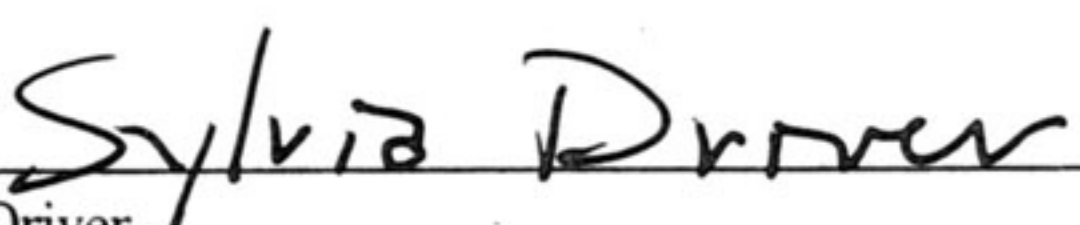
When I arrived at the scene, I found the two vehicles in question blocking the right eastbound lane on Independence, and the left northbound lane on Sixth. After several questions I learned that the car driven by the defendant Nomad (Car A) had been struck on the right front by the car driven by the plaintiff Thomas (Car B). While the cars both sustained fender and hood damage, there were no personal injuries.

The plaintiff's wife was obviously pregnant, and he explained that she was in labor and they were going to the hospital. I called for another squad car to take her to the Hospital Center. I smelled a faint trace of alcohol on the plaintiff's breath, but he did not appear intoxicated, and under the circumstances I decided not to administer a sobriety test.

Nomad told me his story about the ambulance bearing down behind him. He said he had to enter the intersection in order to give the ambulance room to get through.

I visually inspected the intersection from the point of view of both drivers. From the corner of Sixth, headed north, the view down Independence is obstructed by a tree. It's reasonable to believe that Mr. Thomas could not have seen the ambulance coming. On Independence, the street is three lanes wide at the intersection. While parking is allowed within limits, cars are not allowed to park within thirty feet of the edge of the curb. I noticed several cars parked illegally that evening, but there still was room for Mr. Nomad to pull over to the curb to allow the ambulance to pass. For the sake of allowing the ambulance to pass, I did not see any reason why Mr. Nomad had to pull into the intersection.

In my opinion, Mr. Nomad was at fault, and I issued him a ticket for failing to obey the traffic light. In the course of checking his license and registration, I discovered that his license had expired the previous month.


/s/Sylvia Driver

DOCUMENT NO. 3

Affidavit of Sam Nomad

My name is Sam Nomad, and I am the defendant in this case. On Saturday, November 13, I was driving eastbound on Independence Avenue on my way to pick up a friend after work. She works at Jack's Jiffy Burgers on South Elm Street. I was a little late, and I was worried that she might be alone in the parking lot waiting for me. Normally, I would not have been driving at all since my license expired last month, but since there was a hold-up at the Burger place a week ago, I insisted on picking Jeanne up after work.

As I approached Sixth Street, I caught sight of flashing lights in my rearview mirror. I speeded up a little to get out of the way; there were cars parked on both sides of the street, and it seemed clear that the ambulance could not pass me. As I got to the intersection, the ambulance was right on my tail. The light was turning yellow, but since there was no room to pull over, I eased out into the intersection.

As I went into the intersection, I saw a small yellow Escort stopped at the red light on Sixth, heading north. Actually, the driver was edging forward, but I thought for sure he'd stop completely when he saw the ambulance. Instead, he roared into the intersection the minute the light turned green for him; that guy must have been sitting on his accelerator. When we got out to inspect the damage, I could smell liquor on his breath.

Sam Nomad

/s/Sam Nomad

DOCUMENT NO. 4

Affidavit of Mike Roper

My name is Mike Roper. I have been a driver with the Anytown Rescue Squad for the last five years.

On Saturday, November 13, at approximately 11:45 p.m., we were rushing a heart attack victim to the Anytown General Hospital. I was driving the van eastbound on Independence Avenue. I had my flashers on, but for some reason, the siren on that particular truck failed to work that night.

As we approached Sixth and Independence, I noticed a small blue car about 75 yards ahead. The car was going at a normal rate of speed. It started to move to the right just as I was almost on top of him. There wasn't much room on the street for the car to get out of my way, so he spurted into the intersection, just as the light was turning red. At that same moment, a yellow car heading north on Sixth entered the intersection, and the two collided. We couldn't stop to help, but my partner radioed the Anytown police to report the accident.

I'm glad that the driver in the blue car tried to get out of the way. A lot of drivers don't understand how important it is for emergency vehicles to get through. Our heart attack patient could have died had we been delayed even a few minutes. It's drivers like that guy in the yellow car, people who jump the light and act all impatient, that cause so many accidents.

Mike Roper

/s/Mike Roper

DOCUMENT NO. 5

Police Diagram of Accident

Police Diagram of accident on November 13th.

Agreed to by: Sam Nomad
Walker Thomas

Drawn by:
Sylvia Driver, M.P.D.

